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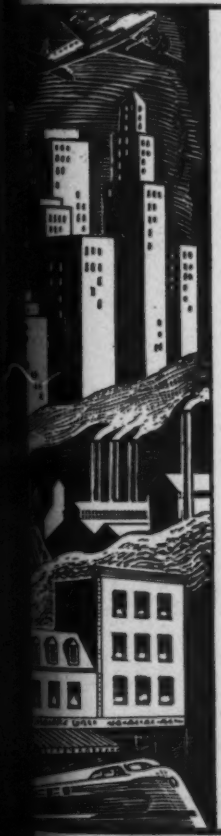

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Recent Decisions

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what constitutes doing business

Secondary Activities

QUESTIONS frequently before counsel for corporations whose employees enter states in which the corporations are not licensed to do business concern such preliminary or secondary activities as:

The conducting of activities within a state in order to weigh the possible advantages of doing business there;

The maintenance of a bank account in such states;

The holding of directors' meetings there;

The collection of accounts arising from interstate business carried on with respect to the state;

The keeping of books and records in the foreign state;

The mere institution of suit in a state court by an unlicensed foreign corporation.

These are typical of those secondary activities which raise questions as to the necessity of qualification where but one of them is carried on in a foreign state.

There are comparatively few decisions with respect to such situations. Counsel have ordinarily concluded that qualification does not appear to be necessary where but one of these activities, standing alone, constitutes the exclusive work furthered in the foreign state.

Decisions which appear to support such a conclusion of counsel in connection with a given activity, are available as follows:

Activities preliminary to the regular carrying on of business in the foreign state: *Automotive Material Co. et al. v. The American Standard Metal Products Corp. et al.*, 327 Ill. 367, 158 N. E. 698; *Jefroy Silks, Inc. v. Papeteries Navarre*, 68 F. 2d 707; *J. R. Watkins Co. v. Hamilton et al.*, 26 So. 2d 207.

Maintenance of a bank account indicated as not amounting to the doing of business: *Badische Lederwerke v. Capitelli*, 155 N. Y. S. 651; *Fruit Dispatch Co. v. Wood*, (Okla.) 140 Pac. 1138.

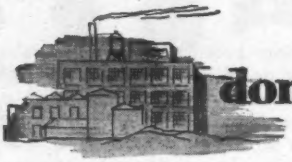
Holding of directors' meetings: *State v. Anniston Rolling Mills*, 125 Ala. 121, 27 So. 921; *Equitable M. F. I. Co. v. McRae*, 156 Ill. App. 467; *Meir v. Crossley et al.*, 305 Mo. 206, 264 S. W. 633; *Major Creek Lumber Co. v. Johnson*, 99 Ore. 172, 195 Pac. 177.

Collection of accounts arising from interstate business: *Sioux Remedy Co. v. Cope*, 235 U. S. 197.

Keeping of books and records in the foreign state: *Chason v. Carson Spaghetti Place, Inc.*, (N. Y.) 55 F. Supp. 831, affirmed, per curiam, 143 F. 2d 660.

The mere institution of suit, unrelated to any local business, by an unlicensed foreign corporation: *Western Loan and Building Co. v. Elias Morris & Sons Co.*, 43 Ariz. 88, 99 P. 2d 137; *Bonham National Bank v. Grimes Placer Mining Co.*, 18 Idaho 629, 111 Pac. 1078; *Simpson Fruit Co. v. A. T. & S. F. Ry. Co.*, 245 Ill. 596, 92 N. E. 524; *Borderland Coal Sales Co. v. Walker*, (Ky.) 270 S. W. 717; *Heiston v. National City Bank of*

Chicago, 132 Md. 389, 104 Atl. 281; *Swing v. B. E. Bristar & Co.,* 87 Miss. 516, 40 So. 146; *United Shoe Machinery Co. v. Ramlose,* 231 Mo. 508, 132 S. W. 1133; *Major Creek Lumber Co. v. Johnson,* 99 Ore. 172, 195 Pac. 177; *Elliott Addressing Machine Co. v. Campbell,* (Tex.) 159 S. W. 2d 967; *Home Brewing Co. v. American Chemical & Ozokerite Co.,* 58 Utah 219, 198 Pac. 170; *Taylor et al. v. Washington State Restaurant Assn.,* (Wash.) 188 P. 2d 671.



domestic corporations

DELAWARE

Sequestrator's attempt to seize stock interests of non-residents held ineffective where seizure was solely by reference to their names and where non-residents held no stock of record.

Plaintiff-stockholder filed a derivative action against the defendant Delaware corporation and certain of its individual directors who were non-residents of Delaware, from whom an accounting was sought of profits and damages allegedly due the company and for other relief. Jurisdiction over the defendants, who moved to dismiss or quash service of process, was attempted to be secured under Sec. 366, Title 10, Delaware Code, 1953, through orders providing for notice by mail and publication and directing a sequestrator to seize all shares and rights pertaining thereto standing in the names of the defendants "or in or to which all, or any of them, may have or hold any right, title or interest." The sequestrator's interim report showed that corporate returns disclosed neither of the moving defendants had any shares standing in their names or any right, title or interest therein, in so far as the corporate books disclosed. Subsequent investigation revealed the defendants owned beneficial interests in the names of the registered owners of such shares. On the basis of the information so obtained, the sequestrator served notice of the seizure of such shares on the corporations, but not pursuant to any additional court order.

The Court of Chancery, New Castle County, after a consideration of the operation and scope of Section 366, and noting that it had been recognized to be broad enough to include the seizure of equitable interests, granted the motion to vacate the orders of sequestration as to the moving defendants "to the extent that the records purport to reflect any effective seizure of any stock interests of these defendants in either corporation." The court concluded that Section 366 must be construed to contemplate an effective seizure. "When the statute is applied to the seizure of stock interests in a Delaware corporation, there is no effective seizure of any stock interest where the

sequestrator, in his notice to the corporation, does no more than identify the stock interest to be seized by reference to the defendants and there are no stock interests of record in their names. The responsibility to provide information sufficient to permit the sequestrator to make an effective seizure is upon the party seeking to invoke this statutory jurisdiction." The court emphasized that it was incumbent upon the sequestrator to provide the corporation with information which would enable it to identify particular stock interests. This he did not do in this instance because the defendants held no stock interests of record.

Greene v. Allen et al., Court of Chancery, New Castle County, April 27, 1953. Robert C. Barab of Wilmington and Paul Roberts of New York City, attorneys for plaintiff. Caleb S. Layton and Henry M. Canby of Richards, Layton & Finger of Wilmington and R. B. Persinger of Simpson, Thacher & Bartlett of New York City, attorneys for Oswald L. Johnston and Floyd B. Odlum, defendants. Commerce Clearing House Court Decisions Requisition No. 494352.

Injunction issued to prevent sale of additional shares, approved by proxy for majority stockholder, to whom shares were not offered, where purpose of sale appeared to be to deprive the stockholder of majority voting control.

Plaintiff corporation, a stockholder in defendant Delaware company, applied for a preliminary injunction to prevent the issuance, transfer or voting of certain shares of defendant's stock. The question of raising capital was considered at the time of the annual meeting of defendant's stockholders in May, 1952. According to the notice of the meeting, one of the matters to be considered was "the advisability of the issuance of additional shares of common stock of the company." A resolution empowering the board of directors to issue the additional shares, being the shares in question, received the vote of the holder of planitiff's proxy. Plaintiff's were the controlling shares. Immediately after the vote on the resolution, a stockholder asked the proxy, who was a director of and attorney for defendant, whether the resolution amounted to a waiver of preemptive rights, and he expressed the opinion that it did. Copies of minutes of the meeting, reciting that the question of preemptive rights had been raised and that the attorney had given an opinion that the approval of the resolution amounted to a waiver, were sent to each of defendant's directors. Plaintiff claimed that it never relinquished its preemptive rights. On this point, the Court of Chancery, New Castle County, remarked: "I fully agree that whether it be characterized as a waiver or an estoppel, plaintiff is precluded from contending that it did not give up its preemptive rights in the authorized but unissued shares of the defendant's stock under the circumstances just narrated. In addition, plaintiff was the majority stockholder and was aware that the shares were to be used for a public issuance."

The court, however, directed that a preliminary injunction should issue, finding it reasonable to infer that the primary purpose behind the sale of the shares was to deprive plaintiff of the majority voting control and observing that "majority voting control is a right which a court of equity will protect under these circumstances."

Canada Southern Oils, Ltd. v. Manabi Exploration Company, Inc., Court of Chancery, New Castle County, May 15, 1953. John J. Morris, Jr., Howard L. Williams, Henry Van Der Goes of Hering, Morris, James & Hitchens of Wilmington, and Coudert Brothers of New York City, for plaintiff. Richard F. Corroon of Berl, Potter & Anderson of Wilmington, for defendant. Commerce Clearing House Court Decisions Requisition No. 495706.

NEW JERSEY

Distribution by corporate cooperative enterprise to stockholder customers in proportion to purchases, held not to be dividends.

Defendant grocery exchange corporation was informally reorganized in 1940 as a cooperative enterprise. This was accomplished by the sale to the corporation by the then stockholders of the larger part of their stock for resale to retail grocer customers of the company. A practice was then instituted by the corporation of refunding yearly to each stockholder who was also a customer, an amount equal to a certain percentage of the price of his purchases. In some years, the rebate was figured at 2%; in other years, the percentage was lower. Plaintiff stockholders, who were not customers, received no such rebates and instituted this suit to recover amounts, as dividends, comparable to the rebates made to the stockholder customers.

The Superior Court of New Jersey, Appellate Division, affirmed a judgment of the Chancery Division dismissing the complaint. The court concluded that the basic contention of the plaintiffs—that the rebates or refunds to the grocer customers were dividends on their shares of stock—could not be sustained. It was emphasized by the court that the challenged payments did not constitute a return upon investment in the corporate stock, and that the distributions were not proportionate to the number of shares held.

Klein et al. v. Greenstein et al., 94 A. 2d 497. W. Louis Bossle of Camden argued the cause for the appellants. Bernard Eskin of the Pennsylvania Bar, Philadelphia, argued the cause for respondents; Wolf, Block, Schorr & Solis-Cohen of the Pennsylvania Bar, Philadelphia, of counsel; Starr, Summerill & Davis of Camden, attorneys.

Corporate contribution, under legislative authority, to a university, held valid.

The directors of plaintiff corporation made a contribution of $1,500. to Princeton University. "Stripped to its simplest form," observed the Superior Court, Chancery Division, Essex County, "the question calling for decision is whether a New Jersey corporation, organized in 1896 to engage in industry for purposes of profit, may lawfully in 1951 donate from its funds for the general maintenance of an educational institution like Princeton University, private in nature, in the sense that it is privately supported, it being an institution where learning is advanced by the teaching of learned lan-

guages, the liberal arts and sciences, architecture, engineering, and political science." In determining this question, the court had occasion to consider, as amended, 1930 legislation permitting corporate contributions by New Jersey companies to community funds and charitable, philanthropic or benevolent instrumentalities conducive to public welfare, under certain limitations, and also, more pertinent, 1950 legislation declaring it to be the public policy of the state that encouragement shall be given to the creation and maintenance of institutions or organizations engaged in "educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions," and granting New Jersey companies permissive power to make contributions mentioned in this public policy under certain specified restrictions related to stock ownership by the recipient institution.

Defendant stockholders, contesting the constitutionality of the legislation, stressed lack of authority in the corporate charter to support the contributions, and asserted it was not within the power of the legislature to alter or impair the charter contract by such legislation, alleging violations of the Federal and State Constitutions and asked a judgment declaring the contribution would be a misapplication of corporate funds and an *ultra vires* act in violation of the property and contract rights of defendants and of the other stockholders of the plaintiff company.

The court concluded that the contribution was not *ultra vires* and that legislative authority existed to alter the contract between the corporation and the state where in the public interest. It regarded the acts of the legislature under discussion as "well within the reserve power of the state and that the exercise of that power is binding not alone upon the company but upon its stockholders in respect of their contract *inter se*." No constitutional objection was found to the legislation, and a declaratory judgment was entered for the plaintiff corporation.

The A. P. Smith Manufacturing Company v. Barlow et al., 97 A. 2d 186. Pitney, Hardin & Ward of Newark, (Waldron M. Ward and Charles R. Hardin, Jr., appearing); Robert P. Weil of the New York Bar, *pro hac vice*, for plaintiff. Stryker, Tams & Horner, of Newark, (Josiah Stryker, appearing) for defendants, except the Attorney General. Theodore D. Parsons (Thomas P. Cook, appearing) for the Attorney General of New Jersey. Jackson, Nash, Brophy, Barringer & Brooks of New York City, (Williamson Pell, Jr., appearing) *amicus curiae*. (*It is possible that an appeal may be taken.*)

Escheat Act held not to effect escheat of dividends which were declared within 14-year period, because not remaining unclaimed for that length of time.

The judgment of the Superior Court, Chancery Division, from which defendant-appellant corporation appealed, escheated certain preferred and common stock of the company, the whereabouts of the owners of which had been unknown to it for 14 years prior to the institution of the proceeding, and the dividends on the stock payable more than 14 years prior to the commencement of the proceeding; but the judgment below determined that the divi-

dends declared and payable less than 14 years before the suit was instituted were not escheatable under the act.

A contention of the state, upon appeal, was that the escheat of stock includes the unclaimed dividends within the 14-year period. The Supreme Court of New Jersey found no merit in this contention, observing that "the statute works a forfeiture and therefore must be strictly construed." Also: "There is nothing in the theory of definitive right to include, as accretions of the stock, dividends declared within the 14-year period and unpaid for want of knowledge of the stockholders' whereabouts." After an examination of the statute, the court remarked that "by the express terms of the act the dividends declared within the prescribed period of 14 years are not escheatable because the dividends declared within the 14-year period cannot be said to have remained unclaimed for that period."

State v. *United States Steel Corp.*, 95 A. 2d 734. Josiah Stryker argued the cause for the defendant-appellant and cross-respondent (Stryker, Tams & Horner of Newark, attorneys). Emerson Richards of Atlantic City argued the cause for the plaintiff-cross-appellant and respondent (Theodore D. Parsons, Attorney Gen., attorney.)

NEW YORK

Cumulative voting amendment to certificate of incorporation regarded as invalidating portion of by-law which provided for removal of director without cause.

The question, in connection with a minority stockholder's application to set aside a director's election, involved the validity of a by-law provision which purportedly provided for the removal of a director, with or without cause, by a majority vote of the stockholders. Some time prior to the removal, by such a vote, of a director without cause, and the election of another in his place, a certificate had been filed amending the respondent corporation's original certificate so as to insert a provision to provide for cumulative voting at all elections of directors of the corporation. The petitioner asserted that her rights under the cumulative voting provision of the certificate were violated, as it in effect invalidated the by-laws in so far as there was provision for the removal of a director without cause.

The New York Supreme Court, Special Term, New York County, Part I, held that the amendment of the certificate to permit cumulative voting invalidated the by-law provision in so far as it provided for the removal of a director without cause, and invalidated and set aside the election mentioned. The court felt that if it were held that the by-law remained in full force and effect with respect to the removal of a director without cause, this would render the cumulative voting provision meaningless.

In re Rogers Imports, Inc., 116 N. Y. S. 2d 106. Moses & Singer (Felix A. Fishman, of counsel), of New York City, for petitioner. Irving Coopersmith of Forest Hills, for respondent.

foreign corporations

COLORADO

Varied local activities of sole sales representative of foreign corporation ruled sufficient to uphold service of process.

Defendant foreign corporation moved to quash service of summons upon it in a suit in the United States District Court, District of Colorado. Service was made upon an agent who was defendant's sole representative or employee in Colorado, who was its sales representative for an area which included Colorado, New Mexico and Wyoming, who had held that position for twenty-one and a half years. He maintained during all this time a home in Denver, Colorado, where he attended to clerical work incident to his duties. His authority did not permit him to bind the defendant contractually. He solicited orders from customers which the defendant was at liberty to accept or reject, being compensated on a commission basis. When payments were made on delinquent accounts, these were transmitted to defendant. He also assisted in effecting local advertising, the expense of which was equally borne by defendant and customers, subject to defendant's approval. While sales were made by sample, no local stock of merchandise was maintained. A hotel room was rented for a week each year to display samples.

The court concluded that the activities carried on were such as to warrant the prosecution of the suit, and denied the motion to quash the service of summons.

Ott v. Hudnut Sales Co., Inc., 107 F. Supp. 919. Paul A. Hentzell and Joseph W. Opstelten of Denver, for plaintiff. Long, Hyman & Smart of Denver, for defendant.

LOUISIANA

Corporation, carrying on 4% of its entire business in state, regarded as not transacting a substantial part of its business there, so as to be barred from maintaining suit.

Appellant Delaware corporation, with its principal office in Minnesota, sued to recover an amount from one of the defendants, or from the two defendant guarantors, alleged to be due it by the principal defendant for merchandise sold and delivered to him. The lower court had found as a fact that appellant had been doing business in the state without qualifying and was without capacity, under the Louisiana statutes, to sue. Appellant's contacts with the state were with dealers who sold to their local customers, being furnished assistance of a general nature by a field man, who secured new deal-

1st

To every lawyer with a corporation client there is one responsibility more needful of great care than almost any other in his practice: preservation of the client's corporate status in any state in which it does business as a corporation.

The wording of the company's contracts, the terms of its undertakings, its preparedness for possible litigation—such tasks of the lawyer for his client count but little if when trouble comes the company is found to have had no authority to do business in the state as a corporation!

Statutory representation of your client by The Corporation Trust Company, CT Corporation System and associated companies, makes it easy for you to maintain for your client a clean, clear corporate status at all times.

ers for appellant, checked their financial responsibility and called periodical meetings of dealers to discuss their problems. The business of the corporation in Louisiana amounted to about 4% of its business everywhere.

The Court of Appeals of Louisiana, Second Circuit, annulling and setting aside the judgment appealed from, regarded the company as not engaged in business in Louisiana so as to be required to be qualified, remarked: "The percentage of plaintiff's business in this state can hardly be denominated as a 'substantial' part of its entire business. It owns no property here, and has no agent or other representative here with authority to bind it in any of its transactions."

J. R. Watkins Co. v. Goudeau et al., 63 So. 2d 161. John G. Gibbs of Natchitoches and C. Stanley McMahon of Winona, Minn., for appellant. W. T. McCain of Colfax, for appellees.

WISCONSIN

Purchase of goods in state, for shipment out of state in interstate commerce, ruled not to require qualification of purchaser.

Plaintiff's president, personally present in Wisconsin, entered into a contract, in behalf of plaintiff corporation, with defendant. The latter agreed to sell and send to plaintiff 100,000 motors, forwarding them f.o.b. Racine, Wisconsin. Motors were shipped to plaintiff at Chicago, Illinois, in partial fulfillment of the contract. Defendant when sued on the contract, alleged its invalidity under Sec. 226.02, Stats. 1949, since replaced by Sec. 180.847, Stats. 1951, in view of the fact plaintiff was not licensed as a foreign corporation to transact business in the state.

The Supreme Court of Wisconsin affirmed a ruling of the trial court that the contract contemplated shipment of the motors to a point outside of Wisconsin so as to involve interstate commerce, thereby making the provisions of Sec. 226.02, Stats. 1949, inapplicable.

Standard Sewing Equipment Corp. v. Motor Specialty, Inc., 57 N. W. 2d 706. Heft, Burgess & Brown (Glenn R. Coates, of counsel), of Racine, for appellant. Benson, Butchart, Haley & Benson of Racine, for respondent.

taxation

ARIZONA

Sales consummated by delivery f.o.b. to the purchaser in another state ruled subject to the gross income tax.

In *Pratt-Gilbert Hardware Co. v. O'Neill et al.*, 65 Arizona 90,174 P. 2d 620, (The Corporation Journal, January, 1947, page 252), decided by the Supreme Court of Arizona in November, 1946, it was held that the Gross Income Tax did not apply to sales made to Arizona customers where goods were delivered f.o.b. points outside the state and shipped to customers in interstate commerce. This holding has been "expressly overruled" in a recent case before the same court, which has held that sales of merchandise made by a licensee under the Excise Revenue Act of 1935, as amended, are required to be included as taxable sales, where such sales have been consummated by delivery f.o.b. to the purchaser in another state.

Arizona State Tax Commission et al. v. Ensign et al.,* 254 P. 2d 1029. Fred O. Wilson, Attorney General, Richard C. Briney, Asst. Attorney General, for appellants. Snell & Wilmer and Edward Jacobson of Phoenix, for appellees. (*Motion for rehearing denied, May 24, 1953.*)

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* The full text of this opinion is printed in the State Tax Reporter, Arizona, page 6354.

GEORGIA

Georgia income tax law, as in effect prior to 1950 amendment, ruled not to subject foreign corporation, engaged in interstate commerce, to the tax.

Defendant in error, a foreign corporation, sought in the court below to recover $57,898.89, including principal and interest paid by it under protest as income tax alleged by the Commissioner to be due beginning with the year 1931. Its products were manufactured outside Georgia. It had no office or place of business in Georgia, but had employed residents of Georgia as sales representatives who solicited orders from wholesalers in Georgia. These orders were accepted or rejected by the company at its home office in New York, and all shipments were in interstate commerce from outside Georgia. The ruling in the trial court was in favor of the corporation.

"The question here presented," said the Supreme Court of Georgia, "is whether or not the activities of the defendant in error as disclosed by the petition amount to "doing business" in Georgia in the sense of the language used in the Georgia Income Tax Act, Ga. L., Ex. Sess., 1931, p. 24. In so far as the activities of the defendant

in error as disclosed by the foregoing statement of facts are concerned, this case is clearly controlled by the rulings in *Suttles v. Owens-Illinois Glass Co.*, 206 Ga. 849, 59 S. E. 2d 392, and *Redwine v. Dan River Mills, Inc.*, 207 Ga. 381, 61 S. E. 2d 771." (In the *Dan River Mills* decision, (The Corporation Journal, December, 1950, page 233, certiorari denied, 340 U. S. 954), also involving the Income Tax Act as it stood prior to a 1950 amendment which extended its scope, the Supreme Court of Georgia held that a foreign corporation, soliciting orders through an office in the state, followed by shipment of goods from another state direct to local customers, was not subject to the income tax. The court, therefore, concluded that "the taxpayer in this case was clearly not subject to pay the income tax sought to be recovered." Certain activities of the company, regarded by the court as "promotional in character," were not regarded as sufficient to alter its conclusion that tax liability was not present.

Redwine v. United States Tobacco Co.,* 75 S. E. 2d 556. Eugene Cook, Atty. Gen., M. H. Blackshear, Jr., Asst. Atty. Gen., George E. Sims, Jr., Asst. Atty. Gen., and F. H. Boney, Asst. Atty. Gen., for plaintiff in error. James H. Wilson, Jr., and Sutherland, Asbill & Brennan of Atlanta, for defendant in error.

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* The full text of this opinion is printed in the **State Tax Reporter**, Georgia, page 1690.

INDIANA

Transactions involving shipment of machinery across state lines, installed by seller, ruled not subject to gross income tax.

The principal question concerned whether the income received by appellee corporation from certain transactions were subject to the Indiana gross income tax. It was an Ohio corporation, manufacturing heat treating furnaces in Ohio which were shipped to Indiana customers f.o.b. cars at point of shipment. Subsequently, they were installed by the company's trained engineers and workmen. The company had no office, plant or agent in Indiana authorized to enter into contracts.

The Supreme Court of Indiana, after reviewing many decisions of the Supreme Court of the United States, the Indiana Supreme Court and other courts, concluded that the transactions were interstate and that a tax upon the gross receipts therefrom would be an unconstitutional burden upon such commerce.

Gross Income Tax Division et al. v. Surface Combustion Corporation,* Indiana Supreme Court, March 19, 1953. Edwin K. Steers, Attorney General, John J. McShane, Deputy Attorney General, Lloyd C. Hutchinson, Joseph E. Nowak and Robert F. Wallace, Deputies, for appellants. Arthur L. Gillion, Robert D. Armstrong, Elbert R. Gillion and Richard L. Gillion, for appellee. Commerce Clearing House Court Decisions Requisition No. 491978.

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* The full text of this opinion is printed in the **State Tax Reporter**, Indiana, page 1538.

KANSAS

Recovery of Oklahoma sales tax and penalty permitted in Kansas court under reciprocal law.

The State of Oklahoma, upon the relation of the Oklahoma Tax Commission, instituted an action in a Kansas District Court and was successful in obtaining a judgment to recover from defendant corporation an Oklahoma sales tax on merchandise sold by defendant to an Oklahoma concern, both states having reciprocal laws allowing the recovery of state taxes. The Supreme Court of Kansas affirmed the judgment, observing: "The sales here having taken place in Oklahoma, the imposition of a sales tax by that state is not violative of the inter-state commerce clause of the Federal constitution merely for the reason the merchandise was transported to that state from Missouri." The Oklahoma law providing that "all taxes, fees, interest and penalties imposed by any state tax law from the time the same shall become due, may be collected in the same manner as a personal debt of the taxpayer to the state of Oklahoma," the Supreme Court of Kansas indicated that a 10% penalty for failure to pay within thirty days after the tax becomes delinquent was actually a part of the tax by way of interest exacted for delinquency in payment, and was therefore recoverable in an action brought in a court of Kansas.

*State of Oklahoma ex rel. Oklahoma Tax Commission v. H. D. Lee Co., Inc.,** 254 P. 2d 291. Henry G. Eager of Kansas City, Mo., argued the cause, and Roy N. McCue and Howard F. McCue of Topeka, and Charles M. Blackmar and Charles B. Blackmar of Kansas City, Mo., on the briefs, for appellants. R. F. Barry of Oklahoma City, Oklahoma, argued the cause, and Lester M. Goodell, Frederick A. Mann and Margaret McGurnaghan of Topeka, and William F. Speakman and E. J. Armstrong of Oklahoma City, Okla., on the briefs, for appellee.

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* The full text of this opinion is printed in the **State Tax Reporter,** Kansas, page 6355.

NEBRASKA

Shares of stock of a "domesticated foreign corporation" held taxable as the shares of a "foreign corporation" under Section 77-722, and not as those of a domestic company.

In *Omaha National Bank v. Jensen,* decided by the District Court of Douglas County, Nebraska, on August 21, 1952, (The Corporation Journal, February-March, 1953, page (193), it was held that the shares of "domesticated foreign corporations" were taxable under Section 77-706, providing for the valuing of the shares of stock "organized under the laws of this state," and not taxable under Section 77-722, relating to the shares of stock of a foreign corporation.

Upon appeal, the Supreme Court of Nebraska has reversed the District

Court and ruled that shares of "domesticated foreign corporations" are taxable under Section 77-722, applying to the shares of stock of a foreign corporation.

*Omaha National Bank v. Jensen, Treasurer of Douglas County,** 58 N. W. 2d 582. Eugene F. Fitzgerald, of Omaha, Clarence S. Beck, Attorney General, and Bert L. Overcash, Asst. Atty. General, for appellant. Flansburg & Flansburg of Lincoln, and Wells, Martin & Lane of Omaha, for appellee. (*This decision has been nullified by Legislative Bill 411 of 1953, effective September 12, 1953, which provides that shares of a domesticated foreign corporation shall be valued and assessed in the same manner as the shares of domestic corporations.*)

* The full text of this opinion is printed in the **State Tax Reporter**, Nebraska, page 2768.

WASHINGTON

Corporation, manufacturing material under Federal contract, using Federal facilities, ruled not to be immune from the payment of a state business and occupation tax.

Respondent corporation, the plaintiff in the trial court, sought to recover a substantial sum which it had paid to the state as business and occupation taxes while operating as a manufacturer in the state under contract with the United States in a plant constructed by the Government and manufacturing fissionable material. The question raised was whether respondent was immune from the taxes mentioned.

Reversing a judgment for the corporation, the Supreme Court of Washington said: "Reduced to its simplest form, we have a business corporation engaged in manufacturing a high explosive and delivering its product to a governmental agency. Our statute authorizes the imposition of a business and occupation tax for the privilege of carrying on such an activity in this state. The facts that respondent uses buildings and facilities of the agency, that by contract it has submitted to certain supervision, and that special fiscal arrangements are provided for, do not make such activities those of the governmental agency, nor do they make respondent such an instrumentality of the United States or of the agency that it is immune, expressly or impliedly, from the business and occupation tax."

*General Electric Co. v. State,** 256 S. W. 2d 265. Smith Troy and Jennings P. Felix of Olympia, and John Newlands of Tacoma, for appellant. Rueben C. Carlson of Tacoma, Ellis N. Slack, Acting Asst. Atty. General, and Berryman Green, Dept. of Justice, of Washington, D. C., for respondent.

* The full text of this opinion is printed in the **State Tax Reporter**, Washington, page 6901.

state legislation

Arizona — Chapter 73 adds to the requirements to effect the qualification of a foreign corporation the necessity of filing a certificate of good standing, the filing of amended or restated articles of incorporation and of a consent of the statutory agent to service of process.

Arkansas — Act 304 substitutes a new franchise tax on domestic and foreign corporations with substantially the same requirements. Returns will hereafter be filed on or before April 1 instead of on or before March 1.

Colorado — House Bill No. 67 continues for the calendar year 1953, or a fiscal year beginning in 1953, the credit of 20% previously allowed corporations against the net income tax.

Delaware — H. B. 584 contains provision for withholding at the source in connection with salaries and other compensation paid to Delaware employees, beginning July 1, 1953, with the first quarterly return and payment due October 31, 1953.

Florida — Senate Bill 140 has substituted a chain store tax rate of $10. for each store located and operated in Florida, in lieu of the graduated rates previously in effect, which ranged from $10. to $400. for each Florida store, based on the number of stores in the chain, whether located in Florida or not.

Senate Bill 28 exempts ice plants and ice dealers engaged principally in the sale of ice from the chain store license tax.

Idaho — Chapter 179 provides for a 15% reduction in the income tax for a taxable year beginning after December 31, 1952.

Massachusetts — Chapter 351 amends the provisions relating to the filing of the Annual Certificate of Condition by a foreign corporation, providing that the information relative to authorized capital stock and assets and liabilities in the certificate is to be as of the close of its last fiscal year preceding the date fixed for the annual meeting, instead of as of a date not more than 90 days prior to the annual meeting.

Montana — Ch. 46 contains provisions permitting corporations to grant to employees participation in the profits of the corporation and the entering into contracts therefor.

Nevada — Senate Bill No. 5 imposes an oil and gas production tax.

North Carolina — Senate Bill 212 provides amendments which permit domestic corporations to provide that classes of par or no par stock may be issued in one or more series, by resolution adopted by the board of directors, pursuant to authority expressly vested in the Board by stockholders' vote.

North Dakota — House Bill 557 has repealed requirements related to the qualification of foreign corporations which called for the recording of the certificate of authority in the office of the Register of Deeds of the county in which the registered office of the corporation is located. Recording of amended certificates of authority, certificates of withdrawal, certificates of revocation and certificates of retirement has also been dispensed with. A new requirement which has been added is, that, upon qualification, a foreign corporation must submit to the Secretary of State a certificate to the effect that the charter of the corporation has not been cancelled and that the corporation is in good standing and duly authorized to transact business.

Senate Bill 41 imposes a 4¼% gross production tax on oil and gas.

Rhode Island — H. B. 656 continues the 5% Business Corporation Tax rate for the calendar year 1953, applicable to net income apportioned to the state. Provision is made, in the case of a corporation filing on a fiscal year basis, that "the portions of its 1952-1953 total net income and its 1953-1954 total net income that shall be taxed at said 5% rate shall be equal to the number of months falling in 1953 of each said fiscal year, divided by 12."

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

FLORIDA. Docket No. 287. *Polizzi v. Cowles Magazines, Inc.*, 197 F. 2d 74. (The Corporation Journal, February-March, 1953, page 192.) Service of process —doing business—jurisdiction. **Petition for writ of certiorari filed, August 20, 1952. Certiorari granted, October 20, 1952.** (73 S. Ct. 94.) **Argued, March 10, 1953. Judgment reversed, June 1, 1953.** (Question whether respondent was "doing business" held irrevelant; an action for libel was properly brought in a state court and removed to the U. S. District Court, which had jurisdiction under Title 28, U. S. C., Section 1441(a) governing the removal of actions. (73 S. Ct. 900.) **Petition for clarification of the opinion denied, June 15, 1953.** (73 S. Ct. 1128.)

* Data compiled from **CCH U. S. Supreme Court Bulletin**, 1952-1953.

regulations and rulings

Missouri — A Kansas City license tax upon the privilege of engaging in the business of selling, offering for sale, storing or transporting any motor fuel may be applied to deliveries of motor fuel purchased by the federal government. The federal constitutional principle under which the federal government is immune to state taxation is not applicable because the legal incidence of the tax rests upon the seller rather than the purchaser. (Opinion of the Comptroller General of the United States, State Tax Reporter, Missouri, ¶ 200-035.)

North Carolina — A North Carolina corporation employing a resident Georgia salesman, who uses his home and a post office box as a base for his business activities, may not deduct the income earned and taxed there, unless the salesman uses a car owned by the corporation or keeps an inventory of goods on hand, constituting an investment in property in that state. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 15-036.)

A nonresident trustee need not file a return of trust income of which the beneficiaries are nonresidents, even though part of the income is rent from real property in North Carolina. The beneficiaries are, however, subject to tax on this rent. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 15-034.)

A foreign, capital stock corporation which acts as a nonprofit cooperative marketing agency for the fruit of its shareholders, returning to them the proceeds of sales in proportion to the quantity of fruit furnished, is not exempt from franchise taxes. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 9-002.)

Oregon — A corporation holding property under a ninety-nine year lease, and deriving at least 95% of its income from the rental of such property, is not entitled to the property holding company exemption because the property is not owned by the corporation. (Legal Department Abstract to State Tax Commission, Income Tax Division, State Tax Reporter, Oregon, ¶ 13-029.)

Pennsylvania — Although Section 8, Article XIV of the Pennsylvania Constitution, adopted November 6, 1951, abolishes all county offices in Philadelphia and provides for the performance of county functions by the city of Philadelphia, it does not purport to abolish the county as a geographic unit of the Commonwealth, nor does it expressly abolish it as a governmental unit. It is therefore incorrect to say that Pennsylvania now has only 66 counties. (Letter of Opinion, Department of Justice to Secretary of Commerce, State Tax Reporter, Pennsylvania, ¶ 200-357.)

Texas — Persons using motor fuel in processing and furnishing sand, gravel and ready mixed concrete to highway contractors, and rock and gravel crushers paid on a yardage basis by highway contractors, are eligible for refund, since they are not engaged in construction or maintenance work being paid for from state funds to which motor fuel collections are allocated. (Opinion of the Attorney General to the Comptroller of Public Accounts, State Tax Reporter, Texas, ¶ 200-090.)

some important matters

For August and September

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Arizona — Annual Report and Fee due on or before September 30.—Domestic and Foreign Corporations.

Arkansas — Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

California — Franchise Tax based on net income. Second Installment due on or before September 15.—Domestic and Foreign Corporations.

Connecticut — Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31 of any previous year).—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 31 and October 31.—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Louisiana — Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

Maine — Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

Oklahoma — Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual Franchise Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

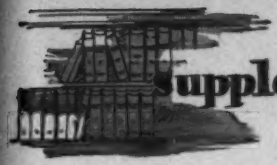
Oregon — Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

Report of Abandoned Property due on or before September 1.—Domestic and Foreign Corporations.

United States — Third Installment of Income Tax due September 15.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Wisconsin — Second Installment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.



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